

Question for Mary Smith from Senator Hatch

Ms. Smith, I believe that the Senate owes some deference to a President's nominees, so long as they are qualified. That is the question I have for you. I see that you have some experience in private practice, a few years in the Justice Department's Civil Division, and a lot of political campaign experience. But what I do not see in your background is any tax experience. That concerns me because the division which you have been nominated to head is a specific rather than a general one. That suggests the need for specific rather than general expertise and experience in the person heading that division. You do not have that expertise and experience, at least as far as I can see, in contrast to the men and women who have headed the tax division in the past in both Republican and Democratic administrations. I know you addressed this briefly in your hearing, but I would like you to explain, concretely and in detail, how you are qualified for this position and how the kind of experience and expertise you do have compensates for the lack of what others have brought to this position in the past.

At its heart, the Tax Division is a litigating division in the Department of Justice. I have extensive litigation experience across a range of sectors – for the government, in a private law firm, and as in-house counsel. I understand first-hand the work of the Justice Department's career trial attorneys, having been a career attorney in the Civil Division. I understand how the Department of Justice works, both from my time there and from my extensive interactions with the Department on policy and budget matters when I was in the White House. I have extensive experience with the federal budgeting process from my time in the White House, where I interacted almost daily with persons in the Office of Management and Budget. In addition, for the last several years, I have concentrated my practice on complex financial litigation that involved accounting and securities issues. I have dealt with tax issues, both while at the White House and at Tyco. I believe that I can give a fresh eye to the tax issues litigated by the Tax Division if I am so fortunate to be confirmed to be the Assistant Attorney General for the Tax Division.

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. *See, e.g.*, 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. *See, e.g.*, 26 U.S.C. § 269. I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company's Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco's tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million

in U.S. income on Tyco's tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. *See, e.g.*, 26 U.S.C. § 162.

Nathan J. Hochman, the most recent Assistant Attorney General for the Tax Division, has supported my nomination, stating that he is confident that I "will provide strong leadership for the Division and [I am] a good choice for the position." Former Solicitor General Theodore B. Olson has urged my swift confirmation, calling me "a fine choice to be this nation's Assistant Attorney General for the Tax Division."

